The interest of the mortgagee in the collateral security is simply that the ratio between his debt and the value of his security shall not be varied: that his debt shall not increase, nor his security diminish. One term of the ratio, the debt, is taken care of by this clause in the mortgage contract allowing of a check to its accumulation by a foreclosure as soon as interest begins to be defaulted. The other term of the ratio, the security, is kept constant by the law which prohibits the mortgagor from impairing the value of the mortgaged property as security. *Van Pelt* v. *McGraw* (1850) 4 N. Y. 110.

The principal case, then, looked at as allowing the mortgagor to apply the insurance money on that which is not yet part of the principal debt on which the security may be applied, may be said to take away, to that extent, the legal right of the mortgagee that the mortgagor shall not waste the mortgaged property; or, looked at as allowing more than one installment of interest to be added to the principal debt, it is taking away the mortgagee's contract right to limit these additions to the debt to one installment of interest. The principal case, therefore, is a clear departure from the view that insurance money is to be regarded as taking the place of the security, in all respects.

MODERN EXTENSION OF THE REMEDY OF INJUNCTION.—Since the days when Lord Hardwicke refused to enjoin the operation of a smallpox hospital because if it was a public nuisance the remedy lay by information, *Baines* v. *Baker* (1752) Ambler 158, and Turner, L. J., in the case of *Attorney General* v. *Sheffield Co.* (1852) 3 De G. M. & G. 304, 320, enunciated the oft reiterated principle that equity interferes by injunction only to protect property rights, the fabric of that doctrine has been pierced with exceptions especially in favor of the national and state governments of this country. It is believed that the following is a fairly representative analysis of the American cases not involving the violation of a property right, in which the jurisdiction by injunction at the instance of the State has been recognized independent of statute: To restrain corporations from committing ultra vires acts against the public interests, *e. g.*, charging more than the rates fixed by law, *Attorney General* v. *Ry. Cos.* (1874) 35 Wis. 425; purchasing a parallel or competing line, *L. & N. R. R.* v. *Commonwealth* (1895) 97 Ky. 675; *Penna. R. R.* v. *Commonwealth* (Pa. 1886) 7 Atl. 374; combining arbitrarily to raise the price of coal, *Stockton* v. *Central R. R.* (1892) 50 N. J. Eq. 52. To restrain the establishment of a millpond near a public schoolhouse, to the injury of the health of the school children. *Bell* v. *Blount* (N. C. 1826) 4 Hawks 384; *Attorney General* v. *Hunter* (N. C. 1826) 1 Dev. Eq. 12. To prevent the trustees of a state lottery from contracting in excess of their authority. *State* v. *Maury* (1851) 2 Del. Ch. 141. To restrain a sheriff from making an illegal sale of liquors. *Fears* v. *State* (Ga. 1897) 29 S. E. 463. To restrain the continuance of an illegal liquor saloon. *State* v. *Crawford* (1882) 28 Kan. 726. To prevent the occurrence of a prize-fight. *Columbian Athletic Club* v. *State* (1895) 143 Ind. 98; *State* v. *Hobart* (1901) 8 Ohio N. P. 246. To prevent a partisan Board of Elections from perpetrating election frauds. *People* v. *Tool* (Colo. 1905) 86 Pac. 224. The decision

in *In Re Debs* (1894) 158 U. S. 564, although rested by the court upon the broad proposition that "Every government, entrusted, by the very terms of its being, with powers and duties to be exercised and discharged for the general welfare, has a right to apply to its own courts for any proper assistance in the exercise of the one and the discharge of the other," clearly involves also a threatened invasion of the government's property rights in the mails.

A case recently decided in Arkansas presents an interesting example of the reluctance of some courts to sanction this departure of equity from the rigid jurisdiction to protect property rights. The defendants were conducting a poolroom openly, but not in a disorderly manner. The attorney-general applied for an injunction; but it was refused on the ground that, conceding a poolroom to be a public nuisance, no invasion of property rights was shown. *State* v. *Vaughan* (Ark. 1906) 98 S. W. 685; see also *People* v. *District Court* (Colo. 1899) 58 Pac. 604. On principle there seems to be no valid reason why, once having recognized the jurisdiction by injunction in any case where no property right was threatened, the equitable remedy should not within constitutional limits be extended to every case in which the commission of an illegal act would be injurious to the people generally. It is true that the jurisdiction of equity to abate public nuisances by injunction is very ancient, which would furnish a ground for the millpond, saloon and prize-fight cases referred to above; but inasmuch as the very reason for the existence of the remedy by injunction was the protection of property rights from irreparable harm, and a public nuisance was only one of many occasions for its employment, it seems an undue refinement to restrict the exercise of this beneficial writ to the narrow scope of public nuisances, after abandoning the fundamental reason for invoking it at all. The test of protection of property rights once laid aside, why may not the government make use of injunctions freely "in the exercise of its powers and the discharge of its duties?" *In Re Debs*, supra. If the people have a right to have public nuisances suppressed, independently of their effect on property rights, it would seem only a short step to the proposition that it is their right not to have railroads charge illegal tolls or purchase competing lines in violation of law. In the remarkable case of *People* v. *Tool*, supra, in which it was held that the rights of the people to a fair election (see *Ashby* v. *White* (1703) Ld. Raym. 938) would be protected by injunction, the soundness of this position is made clear by the words of the court: "It is the undoubted duty of the State to preserve, pure and unimpaired, every channel through which powers are exercised necessary for the protection of the rights and liberties of its citizens. * * * The rights of citizens which will be impaired if the frauds threatened are committed, are of the most vital importance. * * * These acts will affect the entire State. Individuals cannot invoke the power of a court of equity to enjoin these acts, but the State, in its sovereign capacity as parens patriae, has the right to invoke the power of a court of equity to protect its citizens when they are incompetent to protect themselves." Indeed the momentous decision in the Debs case, in breaking once for all the traditional requirement of a property right to ground an injunction, has pointed the way for an expansion of

equitable jurisdiction to every case in which the commission of illegal acts would work injury to the "rights and liberties" of the people; the only limit (aside from constitutional considerations) being the extent to which the courts will define those rights and liberties. Nothing, moreover, is to be gained by attacking this expansion of equity on constitutional grounds. The right of trial by jury is no more infringed in cases where the State has no property rights to protect than where it has. In neither event does punishment for contempt of the injunction preclude the State from punishing the offender for the same act as a crime. *State* v. *Markuson* (1895) 5 N. D. 147. Statutes authorizing injunctions against illegal liquor saloons without regard to injury to property have been sustained without a single exception under the Federal and State Constitutions. *Eilenbecker* v. *District County*, supra; *Carleton* v. *Rugg* (1889) 149 Mass. 550; *Littleton* v. *Fritz* (1885) 65 Ia. 488; *State* v. *Saunders* (1889) 66 N. H. 39; *State* v. *Durein* (1891) 46 Kans. 695; *State* v. *Mitchell* (1892) 3 S. D. 223; *State* v. *Markuson*, supra.